S.B. CIVIL WRIT PETITION NO.90/1997
(Shri Ram Kumar vs. State of Rajasthan & Ors.)

Date :: 03.04.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr.Rajeev Purohit, for the petitioner.
Mr.S.N. Tiwari, Dy. Govt. Advocate.

Heard learned counsel for the petitioner.

By way of filing present writ petition, the petitioner has challenged the order passed by the Board of Revenue, Ajmer dated 11th July, 1996 and the order passed by the Colonisation Commissioner, Bikaner dated 18th July, 1992 and prayed that respondents may be restrained from interfering with the possession of the petitioner over the land in dispute.

The facts narrated inter alia in the petition are that the petitioner applied for allotment of land in square No.201/59 chak No.33 K.Y.D. under Rule 13-A of the Rajasthan Colonisation (Allotment and sale of the Government lands in Indira Gandhi Canal Colony area) Rules, 1975. In pursuance of the application for allotment filed by the petitioner an order of allotment was passed by the Allotting Authority on 09th March, 1989. It is submitted by the learned counsel for the petitioner that after payment of 35% of the amount, a 'Sanad' was issued by the Allotting Authority in favour of petitioner, he has placed on record 'Sanad' issued in his favour on 24th March, 1989. It is further submitted that Colonisation Commissioner, Bikaner issued a notice to

the petitioner to show cause as to why the allotment made in his favour should not be cancelled.

The petitioner filed his reply to the notice but without considering the reply the Colonisation Commissioner, Bikaner cancelled the allotment vide order dated 18th July, 1992 made in favour of petitioner. Against the order of cancellation made by the Colonisation Commissioner, the petitioner preferred a revision petition before the Board of Revenue, Ajmer. The said revision petition was also dismissed by the Board of Revenue, Ajmer vide order dated 11th July, 1996.

It is contended by learned counsel for the petitioner that in the Rajasthan Canal Colony area the Allotting Authority made allotment under Rule 13-A to the number of persons and the said allotments were cancelled on the ground that the land allotted to them were not published in the Rajasthan Gazette. It is further submitted that five another persons filed revision petitions before the Board of Revenue, Ajmer and those five revisions were allowed by the Board of Revenue vide judgment dated 25th August, 1993 (Annexure-5). But unfortunately the revision petition filed by the petitioner was dismissed while ignoring the judgment passed by the Board of Revenue itself.

It is further submitted that the state government preferred writ petition before this Court challenging the order passed by the Board of Revenue in those cases the allotment so made were challenged on the ground that the allotment was in contravention of Rule 13-A of the Rules of 1975 but Revenue Board has allowed the revision petition.

It is contended by learned counsel for the petitioner that the

learned Single Judge of this Court has dismissed the writ petition filed by the State Government against the order of Board of Revenue in which similar question was there. Learned counsel for the petitioner has placed reliance on the judgment reported in 1999 DNJ (Raj.) page 140 State of Rajasthan vs. Smt. Kaushalya Devi etc.

While relying upon the said judgment, it is contended by learned counsel for the petitioner that Board of Revenue while deciding the other revision petition held that allotment made in favour of those persons cannot be cancelled because there was no mistake on their part and this view was affirmed by this Court in above cited decision.

It is also submitted by the petitioner that after allotment huge amount for development of the land was spent by him and at the time of deciding the matter by the Colonisation Commissioner, Bikaner as well as by the Revenue Board, Ajmer this aspect of the matter was not considered that there is no mistake on the part of the petitioner for allotment of land, therefore, the order passed by the Colonisation Commissioner as well as by the Board of Revenue deserve to be set aside.

On the other hand, learned counsel for the State Mr.S.N. Tiwari, vehemently opposed the prayer and contended that the order passed by the Colonisation Commissioner is perfectly legal because allotment was made in contravention of Rule 13-A of the Rules of 1975, therefore, the allotment made in favour of the petitioner was rightly cancelled and it was rightly upheld by the Revenue Board.

I have perused the writ petition as well as reply and the judgment

cited by the petitioner.

It is admitted fact of the case that similar type of allotments were made in favour of five other persons and those were also cancelled by the Colonisation Commissioner, Bikaner upon the same ground. Those orders were challenged by way of filing revision petition before the Board of Revenue, vide judgment dated 25th August, 1993 Annexure-5 the learned Board of Revenue has set aside the order passed by the Colonisation Commissioner, Bikaner cancelling the allotment made in favour of five other persons. Therefore, it is obvious that two different orders were passed by the Board of Revenue.

It is pointed out by the learned counsel for the petitioner that against the order of Board of Revenue, Ajmer in other revision petitions decided in favour of allottees, the State Government has preferred writ petition before this Court and the same was dismissed. Meaning thereby, except petitioner all other persons in whose favour allotments were made under Rule 13-A were restored, but Board of Revenue, Ajmer has dismissed the revision petition filed by the petitioner vide order dated 11th July, 1992, therefore, petitioner is also entitled for the same relief.

The said judgment is reported in 1999 DNJ (Raj.) page 140 in S.B. Civil Writ Petition No.5248/1994 (State of Rajasthan vs. Smt. Kaushalya Devi etc.) in which it has been held as under:-

> "7. Under the circumstances, it cannot be said that the Board of Revenue committed any error in allowing the revision petitions filed by the respondents. Accordingly, Board of Revenue has rightly rejected the review petitions filed by the State, under the circumstances, I am not inclined

to exercise my jurisdiction u/Art.227 of the Constitution of India.

8. Before parting, it must be stated that a pertinent quarry was put to learned counsel Shri Tatia for the petitioner State as to whether any action was taken against the Assistant Colonisation Commissioner, who allotted the land to the respondents in 1989 in breach of R.13-A of the Rules or not? Mr.Tatia only submitted that probably not. Under the circumstances, for no fault of the respondents, they should not be made to suffer and the allotment made in their favour in 1989 cannot be cancelled in 1999 by this Court by interfering with the orders passed by the Board of Revenue."

In this view of the matter and following the judgment passed by the learned Single Judge of this Court, this petition is allowed. The order Annexure-3 dated 18th July, 1992 passed by Colonisation Commissioner, Bikaner and the order Annexure-4 dated 11th July, 1996 passed by Board of Revenue, Ajmer are set aside.

[GOPAL KRISHAN VYAS],J.

A.K. Chahar/-